IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.9 OF 1999

The Commissioner of Income Tax II,
Pune. ...Appellants.

V/s.

The Malegaon Sahakari Sakhar
Karkhana Ltd., A/P Shivnagar,
Tq.Baramati, Dist.Pune. ...Respondent.

ALONGWITH
INCOME TAX APPEAL NO.10 OF 1999

The Commissioner of Income Tax
Nashik ...Appellants.

V/s.

Vasantdada Patil Sahkari Sakhar Karkhana
Ltd.
Vithewadi (Lohoner), Tal:Kalwan,
Dist.Nashik ...Respondent.

ALONGWITH
INCOME TAX APPEAL NO.12 OF 1999

The Jt. Commissioner of Income Tax
Spl. R-1, Nashik ..Appellants.

V/s.

Satpuda Tapi Parisar SSK Ltd.
Shahada, Dhule ..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.19 OF 1999

The Commissioner of Income tax,
Aayakar Bhavan, 31-C/2, ’E’ Ward,
Tarabai Park, Kolhapur-416 003 ..Appellants

V/s.

Shri Chhatrapati Shahu Sahakari
Sakhar Karkhana Ltd.,
Kagal, Dist.Kolhapur.
..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.21 OF 1999

The Commissioner of Income Tax,
Aayakar Bhavan, 31-C/2, 'E' Ward,
Tarabai Park, Kolhapur-416 003. ..Appellants.

V/s.

Dudhganga Vedganga Sahakari
Sakhar Karkhana Ltd., Bidri,
Tal.Kagal, Dist.Kolhapur ..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.24 OF 1999

The Joint Commissioner of Income-tax
Special Range-2, Aurangabad. ..Appellants.

V/s.

Jai Jawan Kisan Sahakari Sakhar
Karkhana Ltd., Nalegaon,
Tq: Ahmedpur,Dist. Latur. ..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.26 OF 1999

The Jt. Commissioner of
Income Tax Spl. R-2, Aurangabad ..Appellants

V/s.

Vinayak Sahakari Sakhar Karkhana Ltd.,
Vinayaknagar Taluka Vaijapur,
Dist.Aurangabad ..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.27 OF 1999

The Joint Commissioner of
Income Tax, Spl.R-2, Aurangabad..Appellants.

V/s.

SANJIVANI (TAKLI) SAHAKARI SAKHAR
KARKHANA LTD., Sahajanandnagar,
Tq.Kopergaon, Dist.Ahmednagar ..Respondent.

ALONGWITH
INCOME TAX APPEAL NO.28 OF 1999

The Joint Commissioner of Income-tax,
Spl.R-2, Aurangabad ...Appellants.

V/s.

SANJIVANI (TAKLI) SAHAKARI SAKHAR
KARKHANA LTD., Sahajanandnagar,
Tq.Kopergaon, Dist.Ahmednagar. ...Respondent.

Mr.P.A.Vyas for the Appellants.
Mr.S.N.Inamdar for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 28th June, 2005.

ORAL JUDGMENT: (Per J.H.Bhatia,J.)

1. These Appeals are preferred by Revenue under section 260A of the Income Tax Act, 1961, challenging the order of the Income Tax Appellate Tribunal.

2. The Respondents in these Appeals, being the Co-operative Sugar Factories, made certain deductions from the price of sugarcane crop supplied by the members of the Society, for different purposes. Those deductions were included in the income of the Society by the Assessing Officer. The Commissioner of Income Tax (Appeals) allowed the claims of the assessees partly and finally the matters were taken up before the Income Tax Appellate Tribunal.

3. The Income Tax Appeal no.9 of 1999 is arising

out of Income Tax Appeal no.1034/PN/97, pertaining to the Assessment Year 1991-92 wherein the following substantial question of law is raised.

> "Whether on the facts and in the circumstances of the case, the ITAT relying on the decision of Special Branch of ITAT in the case of **Shri Chhatrapati SSK Ltd., (198 ITR 78)**it was right in deleting the addition of Rs.27,01,937/- made on account of interest on NRD holding that the various funds/deposits deducted by the assessee society out of the sugarcane purchase price payable to the cane growers are not trading receipts of the assessee".

4. In Income Tax Appeal No.10 of 1999 arising out of Income Tax Appeal no.66/PN/91 pertaining to the assessment year 1987-88, the following substantial question of law is raised:

> "Whether on the facts and in the circumstances of the case, the I.T.A.T. relying upon the Special Bench in the case of **Shri Chhatrapati S.S.K.Ltd.,**

reported in 198 ITR 78(A.T.) was right in deleting the following addition by holding that various funds/deposits collected by the Assessee Society out of sugarcane purchase price payable to the cane growers, are not the trading receipts of the Assessee as held by the Supreme Court in the case of **Bazpur Co-Op. Sugar Factory Ltd. (172 ITR 321).**

1) Non-refundable deposit Rs.10,16,585/-
2) Famine Relief Fund Rs. 3,81,436/-
3) Sugarcane Development Fund Rs. 1,90,717/-
4) Education Fund Rs. 47,694/-

5. In Appeal no.12 of 1999 arising out of Income Tax Appeal No.1081/PN/97 pertaining to the assessment year 1992-93 decided by the Income Tax Appellate Tribunal, following substantial question of law is raised:

" Whether on the facts and in the circumstances of the case, the I.T.A.T. relying upon the Special Bench of

I.T.A.T. Pune's decision in the case of **Shri Chhatrapati S.S.K.Ltd., REPORTED in 198 ITR 78 (A.T.)** was right in deleting the following additions, by holding that various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the trading receipts of the assessee as held by the Hon'ble Supreme Court in the case of **Bazpur Co-operative Sugar Factory Ltd. (172 ITR 321)"** _____

i) Non refundable deposit Rs.75,66,600/-
ii)C.M.Relief Fund (Net) Rs. 6,45,110/-
iii)Cane Development Fund Rs. 8,61,088/-
iv) Water Scarcity Fund Rs.11,82,259/-
v) Interest on NRD Rs.81,69,978/-

6. In Appeal No.19 of 1999 arising out of Income Tax Appeal No.1016/PN/97 pertaining to the assessment year 1994-95. Following substantial question of law has arisen.

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal relying upon the Special Bench in the case of **Shri Chhatrapati S.S.K.Ltd., reported in 198 ITR 78(A.T.)** **was right in deleting the** additions made on account of non-refundable deposits, C.M.s Relief Fund, Area Development Fund, Cane Development Fund, Small Savings Fund and interest on Non-refundable deposits by holding that various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the Trading receipts of the assessee ?"

7. In Appeal No.21 of 1999 arising out of Income Tax Appeal No.440/PN/97 pertaining to the assessment year 1994-95, following question of law has arisen.

> "Whether on the facts and in the circumstances of the case, the Income Tax Appeallate Tribunal relying upon the Special Bench in the case of **Shri Chhatrapati S.S.K.Ltd., reported in 198**

ITR 78(A.T.) **was right in deleting the** additions made on account of non-refundable deposits, C.M.s Relief Fund, Area Development Fund, Cane Development Fund and Interest on Non-refundable deposits by holding that various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the Trading receipts of the assessee ?"

8. In Income Tax Appeal No.24 of 1999 arising out of Income Tax Appeal No.310/PN/94 pertaining to the assessment year 1991-92, following substantial question of law has arisen.

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal relying upon the Special Bench of Income Tax Appellate Tribunal Pune's decision in the case of **Shri Chhatrapati S.S.K.Ltd., reported in 198 ITR 78 (A.T.)** was right in deleting the following additions, by holding that various funds/deposits collected by the

assessee society out of sugarcane purchase price payable to the cane growers are not the trading receipts of the assessee as held by the Hon'ble Supreme Court in the case of **Bazpur Co-operative Sugar Factory Ltd. (172 ITR 321)**

1. Non refundable deposit Rs.14,84,302/-
2. C.M.Relief Fund Rs. 70,403/-
3. Cane Development Fund Rs. 5,93,994/-

9. In Appeal No.26 of 1999 arising out of Income Tax Appeal No.914/PN/97 pertaining to the asssessment year 1991-92 following substantial question of law is raised.

"Whether on the facts & in the circumstances of the case, the tribunal was right in holding that if the "college fund" collected (together with the education fund or independently) is at the instance of sugar control order then the addition on account of college fund cannot be sustained being a nontrading receipt as held by the

special bench in the case of **Shri Chhatrapati S.S.K.Ltd. (198 ITR 78 AT)**"

10. In Appeal No.27 of 1999 arising out of Income Tax Appeal No.1100/PN/1994 pertaining to the assessment year 1991-92, following substantial question of law has arisen.

"Whether on the facts & in the circumstances of the case, the Income Tax Appellate Tribunal relying upon the Special Bench in the case of **Shri Chhatrapati S.S.K.Ltd., reported in 198 ITR 78 (A.T.)** **was right in deleting the** additions made on account of non-refundable deposits, C.M.s Relief Fund, Hutment Fund, Education Fund and interest on Non-refundable deposits by holding that these various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the Trading receipts of the assessee ?"

11. In Appeal No.28 of 1999 arising out of Income Tax Appeal No.1099/PN/94 pertaining to the assessment

year 1990-91, following substantial question of law has arisen.

> "Whether on the facts & in the circumstances of the case, the Income Tax Appellate Tribunal relying upon the Special Bench in the case of **Shri Chhatrapati S.S.K.Ltd., reported in 198 ITR 78 (A.T.)** **was right in deleting the** additions made on account of non-refundable deposits, C.M.s Relief Fund, Hutment Fund, Education Fund and interest on Non-refundable deposits by holding that these various funds/deposits collected by the assessee society out of sugarcane purchase price payable to the cane growers are not the Trading receipts of the assessee?"

12. Heard the learned counsels for the Appellants and the Respondents in all the Appeals. Admittedly, under the bye-laws and and rules of the Co-operative Societies and the sugar factories in the State of Maharashtra, certain deductions are made from the price of sugarcane supplied by the members of the Societies. for different purposes. The deductions are made for one

or the other purposes noted below:

1. Non-refundable Deposit
2. Interest on Non-refundable Deposit.
3. C.M.s Relief Fund.
4. Famine Relief Fund.
5. Hutment Fund.
6. Y.B.Chavan Memorial Fund.
7. Eduation Fund.
8. Cane Development Fund.
9. Area Development Fund.
10. College Fund.
11. Water Scarcity Fund.

13. In the matter of **Bazpur Co-operative Sugar Factory Ltd. 172 ITR 321,** in view of the rules and bye-laws of the Co-operative Sugar Factory in U.P. laying down the terms and conditions of deductions on account of Non-refundable Deposits, the Supreme Court laid down that the Non-refundable deposits deducted from the price of sugarcane supplied by the farmers was income or Trading receipt for the sugarcane factory and therefore, it could not be deducted from income. The Assessment Officers added these deposits in the income relying upon the authority in the matter of **Bazpur** Co-operative Sugar Factor**y. However, in Shri**

C**hhatrapati Sahkari Sakhar Karkhana Ltd. 198 ITR 78**, Special Bench of the Income Tax Appellate Tribunal at Pune analysed the provisions of Maharashtra Co-operative Society Act, the rules and bye-laws of the Co-operative Society laying down the terms and conditions about the deductions and distinguished these terms and conditions from those, in the matter of **Bazpur Co-operative Sugar Factory, Special Tribunal** held that in view of the provisions of law and rules obtained in Maharashtra, deduction on account of Non-refundable Deposits was not income in the hands of the Co-operative Society and therefore, it could not be added in the income of the Society. Relying on that authority, the Income Tax Appellate Tribunal refused additions of some of these deductions in the income. Hence, present Appeals have been preferred.

14. Mr.Inamdar, the learned counsel for the Respondents pointed out that pending present Appeals, the decision of the Special Bench of the Income Tax Appellate Tribunal was challenged before the Bombay High Court in 15 Appeals and the Division Bench of this Court held that the Non-refundable Deposits are the trading receipts whereas, the deductions on account of Area Development Fund, Cane Development Fund, Hutment Fund, Y.B.Chavan Memorial Fund, C.M.s Relief Fund Education

Fund are not the trading receipts and therefore, not taxable. Accordingly, the Appeals and references were disposed of by the High Court. The Sugar Co-operative Society impugned the decision of the High Court in so far as it decided the question against them and the Revenue preferred an appeal so far as the decision went against it. The said Appeals have been disposed of by the Supreme Court on 8th September, 2004. The said judgment in **Siddheshwar Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income Tax with Commissioner of Income Tax v. Shri Chhatrapati Sahakari Sakhar Karkhana Ltd. is** reported at **270 ITR 1.** Most of the points raised in the Appeals before this Court are already covered by the Supreme Court judgment in the said case.

15. The bye-law No.60 provides for fixation of cane price by the Board of Directors every year. The bye-law No.61-A provides that every year the society shall collect from the members Non-refundable deposits at the rate not less than Re.1 per ton of sugarcane supplied by them. It also provides as to how the deposits shall be used and also about the rate of interest to be paid on the deposits. The bye-law No.61-B provides for deductions as the Non-refundable Deposits after certain period not exceeding 5 years. After analysing all the said bye-laws, the Hon’ble Supreme Court pointed out the

following salient features.

" 1. The price of sugarcane is fixed every year by the board of directors, on a consideration of relevant factors.

2. However, so long as the share capital contribution of the State Government and/or the loans taken on capital account from IFCI and other Central financial institutions remain outstanding, the price as fixed by the State Government is liable to be paid by the society.

3. Every year the society shall collect from the members supplying sugarcane a non-refundable deposit at the minimum rate of Re.1 per ton. In fixing the rate, the board of directors has to take into account the liabilities towards the loan due to IFCI and other loans borrowed for capital expenditure and the repayment of time deposits received from the members.

4. The society should continue to collect the deposits so long as it holds Government share capital and other loans (on capital account) are outstanding. However, the deposits collected by the society shall not exceed three times the shares held by the members.

5. The rate of interest on the deposits collected shall not exceed 12 percent.

6. The non-refundable deposit shall not be refunded to the members till the Government share capital and term loans taken from IFCI, etc., towards capital expenditure are repaid fully. On such repayment, the management of the society may convert such deposits into shares.

7. The amount of deposits collected shall be utilized for the repayment of term loans taken for the purpose of capital expenditure.

8. The amount collected as deposit can be transferred to the name of any other member on an application submitted in this behalf.

9. On ceasing to be a member for whatsoever reason, the non-refundable deposit standing to his credit may be transferred to any other

> member's account subject to the approval of the board of directors or can be refunded to such member or his legal heirs with the approval of the board of directors, but such refund can only be granted after the lapse of one year, that too after considering the financial position of the society".

16. After taking into consideration the characters of the deposits, particularly, the payment of interest on such deposits, conversion of deposits into additional shares, transferablity/heritablity and refundability, the Supreme Court came to a conclusion that the Non-refundable as well as the refundable deposits are not the trading receipts and income for the society as there is a provision for payment of interest on such deposits. Deposits are shown in wealth of the members. The interest is also an expenditure of the society and it goes to the concerned member depositor.

17. Taking into consideration the provisions of Maharashtra Co-operative Society Act, the bye-laws and the Government directives, the Hon'ble Supreme Court held that Chief Minister's Relief Fund, Y.B.Chavan Memorial Fund, Hutment Fund are also not the trading receipts for the society because the society collects the amount from the members and makes over the same to Chief Minister's Relief Fund or Y.B.Chavan Memorial Fund or to the Collector for providing facilities to the

hutments. The Famine Relief Fund is also a kind of the Chief Minister’s Famine Relief Fund and the society can not retain that amount, and therefore, the same can not be treated to be the trading receipts or income of the society. In view of the above Supreme Court judgment in Shree Chhatrapati Sahakari Sakhar Karkhana Ltd.,it is settled that deductions towards the Non-refundable deposits, interest on Non-refundable deposits, Chief Minister’s Relief Fund, Famine Relief Fund, Hutment fund and Y.B.Chavan Memorial Fund are not the trading receipts or the income. Therefore, they cannot be included in the income of the society.

18. It should be noted that the Supreme Court also considered the provisions about the collection of amounts towards the Area Development Fund and the Cane Development Fund. Having considered the scheme, the Supreme Court held that the amounts realised on account of the Cane Development Fund reach the assessee as his income and are utilised by the assessee for the benefit of his and his members. And therefore, the deductions made from cane price towards the Cane Development Fund should be treated as income of the assessee. As such, this point is also covered by the Supreme Court.

19. Their Lordships of the Supreme Court observed

that on June 21, 1988, the Agriculture & Co-operation Department of the Government of Maharashtra framed certain directive principles laying down the modalities of utilisation of the Area Development Fund in exercise of powers under section 79A of the Maharashtra State Co-operative Societies Act. The receipts in the form of Area Development Fund always remained with the assessee society. It was contended that there is specific legal obligation for the society to spend the said fund for specific purposes which are unrelated to the business of sugar factories. And therefore, such receipts cannot be treated as income of the assessee. Their Lordships left this point open for the fresh determination by the Income Tax Appellate Tribunal.

20. As far as Education Fund is concerned, this point is covered by the decision of the Division Bench of this Court in **Krishna Sahakari Sakhar Karkhana Ltd. v. Commissioner of Income Tax 229 ITR 577**. It was found that it is clear from the provisions of section 68 of the Maharashtra Co-operative Societies Act read with rule 53 of the Rules that it is a statutory obligation of the co-operative society to contribute to the Education Fund at the rate of 25 paise per ton of sugarcane crushed per year, subject, however, to the maximum of Rs.50,000. This contribution was made to the

State Federal Society and as the said contribution was held to be an expenditure directly connected or related to the carrying on of assessee's business. In view of this finding of this Court in Krishna Sahakari Sakhar Karkhana Ltd., deductions on account of Education Fund can not be treated as the trading receipts. Therefore, such amount cannot be added in the income of the society.

21. There is no material before this Court to find out under what provisions and for what purpose, the deductions towards the College Fund were made by Vinayak Sahakari Sakhar Karkhana Ltd., the Respondent in Appeal No.26 of 1999 and how the College Fund is utilised. Therefore, it will be difficult to give any finding on the same. This subject may be left open for fresh consideration by the Tribunal. Similarly, there is no material before us to show under what provisions the deductions are made towards the Water Scarcity Fund and how that amount is utilised. Therefore, it is difficult to conclude as to whether the said fund is the trading receipts or not. Hence, in our considered opinion, the question about the Water Scarcity Fund may also be left open for fresh consideration by the Tribunal.

22. In view of the above finding in Appeal No.9 of

1999, we answer the question in affirmative; that is, in favour of the assessee and dismiss the Appeal.

23. In Appeal No.10 of 1999, we hold that the Tribunal was right to the extent of Non-refundable deposits, Famine Relief Fund and Education Fund, however, it was not correct as far as Sugarcane Development Fund is concerned and we answer the question accordingly. In the result, the Appeal is partly allowed.

24. In Appeal No.12 of 1999 we hold that the Tribunal was right in refusing to add Non-refundable Deposits, interest on Non-refundable deposits and Chief Minister's Relief Fund. However, it was not correct to the extent of Cane Development Fund. As there was no material about the manner of utilisation of the Water Scarcity Fund, we remand the matter to the Tribunal for fresh consideration after hearing of the parties. In the result, the Appeal is partly allowed.

25. In Appeal No.19 of 1999, we hold that the Tribunal was right in refusing to add the Non-refundable deposits, interest on Non-refundable Deposits, C.M.s Relief Fund, Small Savings Fund but it was not correct to the extent of Cane Development Fund. The question to

the extent of Area Development Fund stands remanded back to the Tribunal for fresh consideration of the hearing of the parties as directed by the Supreme Court in Shri Chhatrapati Sahakari Sakhar Karkhana Ltd. Accordingly, the Appeal is allowed partly.

26. In Appeal No.21 of 1999, we hold that the Tribunal was right in disallowing the addition of Non-refundable deposits and the C.M.s Relief Fund in the income but was not correct in disallowing addition of Cane Development Fund for the reasons given above. The Tribunal shall hear and decide a-fresh about the Area Development Fund. Accordingly, the Appeal is partly allowed.

27. In Appeal No.24 of 1999, we hold that the Tribunal was right in disallowing the addition of Non-refundable Deposits and C.M.s Relief Fund in the income of the society but was not correct in respect of Cane Development Fund. Accordingly, the Appeal is partly allowed.

28. In Appeal No.26 of 1999, we uphold the findings of the Tribunal, deleting the addition of Education Fund from the income of the society and we also uphold the directions given by the Tribunal to restore the question

of addition of the College Fund to the file of assessment officer for deciding the matter a fresh after taking into consideration the material that may be placed on record by the parties. In the result, the Appeal stands dismissed.

29. In Appeal No.27 of 1999, we answer the question in affirmative and uphold the findings of the Tribunal and in the result, the Appeal stands dismissed.

30. In Appeal No.28 of 1999, we answer the question in affirmative and uphold the findings of the Tribunal and in the result, the Appeal stands dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)